IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5007 OF 2004

Subhash Dadasaheb Patil ..Petitioner.
Vs.
The Kolhapur Municipal Corporation
Kolhapur ..Respondent.

Shri P.S.Dani, adv. for the Petitioner.

WITH
WRIT PETITION NO.5125 OF 2004

M/s. Bharat Petroleum Corporation Ltd. ..Petitioner.
V/s.
The Commissioner, Kolhapur Municipal
Corporation, Kolhapur. ..Respondent.

Shri S.G.Page, adv. for the Petitioner.

CORAM : J.H.BHATIA, J.
DATE : OCTOBER 5, 2007.

P.C.:

1. Heard the learned counsel for the petitioners in both the petitions.

2. To state in brief, in the year 1965, the then Burmah Shell Oil Storage and Distributing Company of India (In Brief 'Burmah Shell') had taken the suit property bearing City Survey No.502/511 admeasuring 4165 sq.ft. situated in D ward at Kolhapur on lease for a period of six years from the Kolhapur Municipal Corporation. . The lease period was expected to end on 31-1-1971. The lease period was extended to 31st

January, 1983. In the meanwhile, the Burmah Shell was taken over by Bharat Petroleum Corporation Ltd., which is a Government Company under the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 (In Brief 'the Burmah Shell Act, 1976') and the property of Burmah Shell was vested in the Government and is turned in the Government company, i.e., Bharat Petroleum Corporation Ltd. (In brief 'B.P.C.L.'), which is a petitioner in writ petition no.5125 of 2004. In the year 1977, in the development plan of the Kolhapur Municipal Corporation, this particular plot of the land was reserved for traffic island. On the basis of that on 13.3.1980, the then Municipal Commissioner issued a notice to the petitioner for eviction. The Municipal Civil Appeal No.1 of 1981 filed against that notice was allowed in view of the fact that the lease was subsisting when this notice was issued. Thereafter , again the Municipal Commissioner issued a notice dated 12.2.2001, which was also challenged by filing Civil Suit No.152 of 2002. However, that notice was withdrawn by the Municipal Corporation and the suit was also disposed off for want of prosecution. After that on 17-9-2002 the Municipal Commissioner issued a fresh notice of eviction. That notice is under challenge. The B.P.C.L., i.e., the petitioner filed Municipal Civil Appeal No.11 of 2003 challenging the notice on the ground that notice is illegal and arbitrary, that

the petrol pump does not create any traffic obstruction that proper opportunity was not given by the commissioner to lead the evidence and that the decision of the commissioner is arbitrary and against the principles of natural justice. It was further contended by the petitioner that the standing committee of the Municipal Corporation had passed a resolution to provide an alternative premises to the appellant and to take action for eviction only after such alternative premises is provided. In view of this, the order of the commissioner is illegal and liable to be set aside. The appeal was resisted by the respondent contending that lease period had come to an end in 1983. Thereafter, the petitioner had no right to remain in possession of the property. This property is required by the Municipal Corporation for traffic island as per the development plan as existence of the petrol pump on the said property is hazardous to the traffic. It is also contended that the standing committee of the Corporation has no powers to protect the possession of the petitioner till the alternative premises is provided to it.

3. After hearing the parties, the learned VIth Additional District Judge, Kolhapur dismissed the appeal holding that the petitioner has no right to remain in possession of the suit property that proper

opportunity was given to the petitioner before order of eviction was passed and that the suit premises are required for the public purposes.

4. Being aggrieved by the dismissal of the appeal, the B.P.C.L. has filed Writ Petition No.5125 of 2004 while the petitioner in Writ Petition No.5007 of 2004 claims to be sub-lessee or agent of the B.P.C.L. He is running business of the petrol pump at that place.

5. After perusal of the impugned order and the relevant documents, I find that there is no dispute that the disputed property was leased out to Burmah Shell Company for a period of six years in 1965. That period came to an end on 31-1-1971. However, the lease was extended for a further period of ten years upto 31.1.1983. Before the expiry of that period Burmah Shell Company was acquired by the Government of India under the Burmah Shell Act, 1976 and thereafter the Government of India entrusted the property to the petitioner B.P.C.L, which is a Government Company and as such, the petitioner B.P.C.L. continued to be in possession of the property as lessee. There is no dispute that as per the development plan of 1977, this property was reserved for traffic island. As per the Section 5(2) of the Burmah Shell Act on the expiry of the term of any lease or tenancy, such lease or tenancy

shall, if so desired by the Central Government, be renewed on the same terms and conditions on which the lease or the tenancy was held by Burmah Shell immediately before the appointed day. The lease had come to an end in the year 1983 and there is nothing on record to show that either the Central Government or the B.P.C.L. had ever sought to renew the lease. Thereafter in view of this, the possession of the petitioner B.P.C.L. and its agent, which is the petitioner in Writ Petition No.5007 of 2004 was not authorised. Clause (d) of Section 81-A of The Bombay Provincial Municipal Corporations Act, 1949 defines "unauthorised occupation" thus,

> "81-A.(d) "unauthorised occupation" in relation to any Corporation premises, means the occupation by any person of Corporation premises without authority for such occupation; and includes the continuance in occupation by any person of the premisses after the authority under which he was allowed to occupy the premises has expired, or has been duly determined."

On perusal of this definition, it becomes clear that unauthorised occupation in relation to any Corporation premises includes the continuance in occupation by any person of the premises after the authority under which he was allowed to occupy the premises has expired or has been duly determined. In the present case, the

authority to occupy the premises has expired in 1983 and, therefore, the occupation of the petitioners on the property is unauthorised occupation. Section 81-B(1)(b) provides that where the Commissioner is satisfied that any person is in unauthorised occupation of any Corporation premises, he may serve notice to the occupant to vacate the same within one month of the date of service of the notice. Section 81-B also provides for the procedure to be followed by the Municipal Commissioner in respect of taking action for eviction. There is nothing to show that such procedure was not followed. The learned Additional District Judge noted that not only notice was served as per law but due opportunity of hearing was given to the petitioners before any action of eviction could be taken. The petitioners also preferred appeal against the said order under Section 81(F) and that appeal has been dismissed.

6. From this it is clear that neither the petitioners have any legal right to remain in possession nor there is any legal flaw in the notice issued by the Municipal Commissioner for eviction. It could not be stated that the action of the commissioner is arbitrary because property is clearly earmarked for traffic island in the development plan of 1977. It is contended by the petitioners that the standing

committee of the corporation had passed a resolution asking the commissioner not to evict the petitioner till alternative accommodation or premises is made available. The learned Additional District Judge observed that the standing committee could not pass such resolution, which would be against the development plan and against the law. The learned counsel for the petitioners could not point out any provision of law whereby it could be stated that the Municipal Commissioner is bound to act as per the resolution passed by the standing committee even if it is against the development plan and against the provisions of law.

7. The learned counsel for the petitioners in Writ Petition No.5007 of 2004 also contended that action of the Municipal Corporation is barred by the limitation as the action was not taken within reasonable time particularly because no period of limitation is prescribed for taking such action. In support of this, he placed reliance upon **Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim (1997) 6 Supreme Court Cases 71.** In that matter, the appellant had purchased certain property in December, 1972 and his name was also mutated in February, 1973. In September, 1976, the Mamlatdar initiated a suo-motu enquiry under Section 84-C of the Bombay Tenancy and Agricultural Lands Act, 1948. It was held that the action of the Mamlatdar was

belated and as no time limit was prescribed under law, action could be taken at the most within three years from the sale. As such it was struck down as barred by the limitation. In my considered opinion, this authority is not applicable to the facts of the present case. In that case, the appellant had purchased the property under the registered sale deed and had become the owner. If the sale is unauthorised in suo-motu proceeding, the sale could be revoked and the land could be taken back by the Government within a reasonable time. In the present case, admittedly the Corporation is the owner of the property. The petitioner B.P.C.L. came in possession as a lessee and after expiry of the lease, no further steps were taken to get it extended. It appears that from time to time notices were issued and some litigation had also taken place. In spite of this, there is nothing to show that the petitioners ever denied the title of the Municipal Corporation or claimed adverse possession of the property. In view of this, the petitioners are in unauthorised occupation within the meaning of Section 81-A and the Municipal Commissioner could take an action for eviction under Section 81-B of the Bombay Provincial Municipal Corporation Act, 1949. I find no fault with the impugned order passed by the learned Additional District Judge while rejecting the appeal preferred by the petitioner/B.P.C.L. There is no

substance in the present writ petitions.

8. In the result, both the petitions stand dismissed.

[J.H.BHATIA, J.]